

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
REPLY BRIEF**

74-1886 B

A P P E A L N O . 7 4 - 1 8 8 6

P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MERCU-RAY INDUSTRIES, INC. AND
JAMES SCOTT KREAGER,

PLAINTIFFS

JAMES SCOTT KREAGER,

APPELLANT

-against-

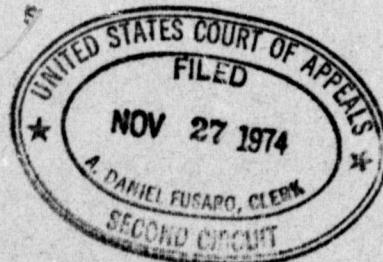
BRISTOL-MYERS COMPANY
CLAIROL, INC.
MICHEL S. SCHWARTZ,

DEFENDANT-APPELLEES

R E P L Y B R I E F O F

PLAINTIFF - APPELLANT

JAMES SCOTT KREAGER
PLAINTIFF-APPELLANT
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3

APPEAL NO. 74-1886

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OF APPEALS
FOR THE SECOND CIRCUIT

MERCU-RAY INDUSTRIES, INC. AND

JAMES SCOTT KREAGER,

PLAINTIFFS

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-against-

BRISTOL-MYERS COMPANY,

CLAIROL, INCORPORATED

MICHEL S. SCHWARTZ,

DEFENDANT-APPELLEES

REPLY BRIEF OF
PLAINTIFF-APPELLANT, JAMES SCOTT
KREAGER, TO BRIEF OF DEFENDANT-APPELLEES
BRISTOL-MYERS COMPANY AND CLAIROL, INC.

REPLY TO BRISTOL-MYERS, INC. AND
CLAIROL, INC. QUESTION I : "ASSIGNMENT"

1. THE CRITICAL ISSUE IN THIS APPEAL FOCUSES ON THE "ASSIGNMENT" OF INTERESTS IN THIS ACTION FROM MERCURAY INDUSTRIES, INC. TO JAMES SCOTT KREAGER.
2. BY ORDER DATED 6/25/74, DUFFY, D.J. REFUSED TO RECOGNIZE EFFECTIVENESS OF ASSIGNMENT; WHILE CONCURRENTLY BY LETTER DATED MAY 30, 1974 ADDRESSED TO MR. JAMES SCOTT KREAGER FROM MILTON LICHAMAN, CHIEF, INDIVIDUAL INCOME TAX BRANCH-INTERNAL REVENUE SERVICE, WASHINGTON, D.C., THE INTERNAL REVENUE SERVICE ADDRESSED ITSELF, AFTER ANALYZATION, TO A 14 PARAGRAPH, 3 PAGE LETTER REGARDING THE ASSIGNMENT. SOME OF THE CONTENTS ARE AS FOLLOWS:
 - (a) P.2: PAR. 7 : "IF ALL THE SHARES OF THE COMPANY WERE NOT "CALLED IN" IT WOULD APPEAR THAT THERE HAD BEEN A REDEMPTION AND SECTIONS 301, 302 and 311 OF THE CODE WOULD APPLY. SECTION 302 (b) (1) WOULD APPLY TO THE REDEMPTION IF IT COULD BE CONSTRUED AS NOT ESSENTIALLY EQUIVALENT TO A DIVIDEND. IN THIS REGARD SEE UNITED STATES V. MACLIN P. DAVIS et ux., 297 U.S. 301 (1971). IF THE REDEMPTION DID NOT QUALIFY UNDER SECTION 302 (b) (1) SECTION 302 (d) AND SECTION 301(c) WOULD APPLY TO THE TRANSACTION.
 - (b) P.2: PAR. 8: TAXABILITY TO THE COMPANY, IF ANY, ON A DISTRIBUTION WOULD BE DETERMINED PURSUANT TO SECTION 311 OF THE CODE. SEE REV. PROV. 73-35, 1973- 48 I.R.B. (COPY ENCLOSED).

(c) P.2:PAR.9: " SINCE YOU HAVE NOT YET RECOVERED ANY AWARD OF DAMAGES BY WAY OF A COURT JUDGMENT OR AN OUT-OF-COURT SETTLEMENT OF THE ANTI-TRUST SUIT, IT IS NOT POSSIBLE FOR US TO DETERMINE, AMONG OTHER THINGS, WHAT PORTIONS OF ANY AWARD THAT YOU MIGHT RECEIVE WOULD BE ATTRIBUTABLE TO RECOVERY OF CAPITAL, COMPENSATION FOR LOSS TO PROFITS OR PUNITIVE DAMAGES".

(d) P.3:PAR.13: " IN ADDITION, WE WOULD HAVE TO DETERMINE WHETHER THE ACCUMULATED EXPENSES ARE PROPERLY THE EXPENSES OF YOU AS AN INDIVIDUAL TAXPAYER, OR OF THE COMPANY, WHETHER THE EXPENSES ARE BUSINESS OR PERSONAL IN NATURE, AND WHETHER RETURNS HAVE BEEN FILED DURING THE YEAR THE EXPENSES WERE INCURRED AND PAID".

WITHOUT QUESTION, THE INTERNAL REVENUE SERVICE ADDRESSED ITSELF TO THE LEGAL TECHNICALITIES RESULTING FROM THE ASSIGNMENT.

~~ALSO, DUFFY, D.J. BY ORDER 6/25/74 Page 4 EVEN SO STATES:~~

~~? THE LAW IS WELL SETTLED THAT A TREBLE DAMAGE ANTITRUST CLAIM CAN BE ASSIGNED".~~

3. DUFFY D.J. ORDER 6/25/74 P.4 RELIES ON INSELBUCH AFFIDAVIT 11/20/73 INSERTED IN THIS ACTION BY GENERAL ELECTRIC STATING "DID NOT CONTEST FOR REASONS OF OUR OWN". WHEREBY DUFFY, D.J. STATES ASSIGNMENT BY 2nd CIRCUIT NON-CONTROLLING. WHILE DUFFY, D.J. REFUSES TO HONOR ASSIGNMENT; BOTH GENERAL ELECTRIC AND ITT AS WELL AS THE SAME DISTRICT COURT APPARENTLY HONOR THE ASSIGNMENT AS ON 11/26/74 MR. KREAGER ARGUED IN SOUTHERN DISTRICT COURT AGAINST GE AND ITT BEFORE TRIAL JUDGE WEINFELD FOR SECOND TIME WITHIN A MONTH; ALSO GE AND ITT NOTICES MR. KREAGER TO APPEAR AND MR. KREAGER ALSO ARGUED AGAINST GE AND ITT ON TWO RECENT OCCASIONS BEFORE JUDGMENT CLERK AS WELL. AT TRIAL IN

MERCUR-RAY INDUSTRIES, INC. VS: GENERAL ELECTRIC COMPANY ET AL

68 CIVIL 944 (EW); ON APPEAL 2nd CIRCUIT TITLE CHANGED TO

JAMES SCOTT KREAGER VS: GENERAL ELECTRIC COMPANY ET AL 497 F2d 468

WHICH WAS THE BASIC CASE TO WHICH DUFFY, D.J. REFERRED IN REFUSING TO HONOR ASSIGNMENT; TRIAL JUDGE WEINFELD STATED ON PAGE 321 OF TRIAL TRANSCRIPT "THE CORPORATION IS THE PLAINTIFF HERE"; HOWEVER, NOW NOT ONLY THE TRIAL JUDGE; BUT GE AND ITT AS WELL RECOGNIZE CHANGE OF TITLE BY THEIR OWN ACTS AS NOW MR. KREAGER IS ARGUING IN DISTRICT COURT REGARDING THIS BASIC CASE WHERE TITLE WAS CHANGED. CLEARLY DUFFY, D.J., ERRED IN ASSESSING AFFIDAVIT THAT STATED "FOR REASONS OF OUR OWN" AS NOW GE AND ITT ARGUE AGAINST MR. KREAGER IN DISTRICT COURT AS WELL AS COURT OF APPEALS.

4. WHILE DUFFY, D.J. STATES IN 6/25/74 ORDER page 4 "THE LAW IS WELL SETLED THAT A TREBLE DAMAGE ANTI-TRUST CLAIM CAN BE ASSIGNED", THE DISTRICT COURT ERRED IN ATTEMPTING TO DISTINGUISH BETWEEN LEGAL RIGHTS OF A CORPORATION BASED ON NUMBER OF STOCKHOLDERS. CERTAINLY TO DISTINGUISH BETWEEN A LEGAL ENTITY'S RIGHTS, AS IN INSTANT CASE, WHERE SOLE STOCKHOLDER CONTROLS, WOULD OPEN A WIDE RANGE OF VULNERABILITY TO COMPANIES FAMILY CONTROLLED; AND PERHAPS WOULD BE EXTENDED TO 2 STOCKHOLDERS; OR 3 OR MORE CREATING AND CONTESTING THE VALIDITY OF A CORPORATION DULY FORMED AND OPERATING BY THE LAWS OF THE STATE IN WHICH IT WAS FORMED.

5. THE ISSUES AS PRESENTED FOR REVIEW AND THE STATEMENT OF FACTS OF APPELLEES, BRISOL-MYERS ET AL DEVIATE FROM FACTUAL MATERIAL IN SOME INSTANCE. INSTEAD OF ANSWERING ONE BY ONE, APPELLANT RELIES ON THE BRIEF AND THIS REPLY BRIEF AS WELL AS THE RECORD IN THE CASE.

HOWEVERM STATEMENT THAT ONE OF ATTORNEYS WITHDREW IN GE CASE DUE TO DISPUTE WITH MR. KREAGER IS NOT FACT. SAID COUNSEL AND MR. KREAGER AGREED UPON THEIR WITHDRAWAL IN 2nd CIRCUIT; WHEREBY, ALFRED LEE, ESQ. OF WEIL, LEE & BERGIN, ESQS. REPRESENTING APPELLEES HERE, IMMEDIATELY SENT SAID ATTORNEY FOR MERCU-RAY INDUSTRIES, INC.

A 3 PAGE LETTER ASKING THEM NOT TO SIGN THE AMENDED COMPLAINT.

THE INTERFERENCE BY BRISCOL-MYERS COUNSEL WITH PLAINTIFF'S COUNSEL AND SOLICITING THEIR WITHDRAWAL WAS THE CAUSE OF THE DISPUTE.

BESIDES, IN SAME CASE WHERE AN ACTUAL DISPUTE BETWEEN MR. KREAGER AND A 3rd SET OF COUNSEL HAD TAKEN PLACE, THE DISTRICT COURT RULED THAT THE SETTLEMENT OF THE MATTER WOULD REQUIRE A PLENARY ACTION. HOWEVER, IN INSTANT MATTER, DUFFY, D.J. FAILS TO EVEN HOLD A HEARING WITH ALL ATTORNEYS ATTENDING. CLEARLY, THE SOLICITATION BY BRISCOL-MYERS OF PLAINTIFF COUNSEL WITHDRAWAL WAS THE ISSUE.

APPELLEES BRIEF STATES MR. KREAGER TOOK ASSIGNMENT OF CORPORATION'S CLAIMS; BUT NOT PATENT RIGHTS. CLEARLY, THE MATTERS ARE ENTIRELY UNRELATED ISSUES. NO CASE IS KNOWN IN THE SCORES OF ASSIGNMENTS WHERE PATENT RIGHTS WERE ALSO ASSIGNED.

WHILE APPELLEES CLAIM MR. KREAGER RECALLED ESSENTIALLY IDENTICAL FACTS IN NEW JERSEY, THE COMPLAINTS SPEAK FOR THEMSELF. WHILE SAID MATTER IS BEFORE 3rd CIRCUIT, FURTHER COMMENT IS NOT WARRANTED IN THIS CASE.

REPLY TO BRISCOL-MYERS "PUBLIC POLICY"
STATEMENT:

6. CLEARLY AND UNEQUIVOCABLY, UNDER NO CIRCUMSTANCE CAN THE INSTANT COMPLAINT BE CALLED A BASELESS CLAIM; CLEARLY THE DISTRICT COURT HAS

NOT INFERRED SAME DIRECTLY OR INDIRECTLY. AS THE COMPLAINANT SPELLS OUT SO CLEARLY, THIS ACTION INVOLVES VIOLATION OF THE ANTI-TRUST LAWS; FRAUD AND DECEIT IN A TIME PERIOD THAT HAS NEVER BEEN TRIED IN ANY COURT AND CONSTITUATING FACTS AND ISSUES NEVER TRIED IN ANY COURT.

THE BASIC PATENT INVOLVED HERE IS A HIGH FREQUENCY TRANSMITTER WHICH IS BROADCASTING LIGHT THROUGH RADIO WAVES. WITH FURTHER RESEARCH PLAINTIFF'S CONCEPT WAS THE KEY TO (a) ELIMINATION OF MASSIVE, POWER LINE FEEDER CABLES; (b) POSSIBLE ELIMINATION OR REDUCTION OF USE OF BALLAST TRANSFORMERS; (c) PRODUCE A NEW LIGHT THAT OPERATES ON HIGH-FREQUENCY WITH A LIFE EXPECTANCY OF PERHAPS 20 YEARS OR MORE IN COMPARISON WITH THE CURRENT "LIGHT BULB" IN ADDITION, THE SAVINGS IN THE CONSUMPTION OF ENERGY AT A TIME WHEN THIS NATION FACES AN ENERGY CRISIS WAS PARAMOUNT. BRISBOL-MYERS AND CLAIROL CONSPIRED TO KEEP THIS PRODUCT OFF THE MARKET AND FROM RESEARCH INTO THE NEW PRODUCTS. UNDER NO INTERPRETATION CAN THEY PRETEND THIS MAJOR ANTI-TRUST ACTION IS A BASELESS CLAIM. TO THE CONTRARY, THE DISTRICT COURT SHOULD HAVE EXPEDITED THIS CASE AND PROCEEDED ON THE MERITS BASED UPON THE NATIONAL ENERGY CRISIS ALONE; LET ALONE THE VALID CLAIMS OF FRAUD, ANTI-TRUST VIOLATIONS ETC.

R E P L Y A O " R E S J U D I C A T A I S S U E "

7. ON 7/24/74 THE 2nd CIRCUIT RULED ANY PARTY COULD RAISE THIS ISSUE IN THE APPEAL. CLEARLY AND UNEQUIVOCABLY, THIS MATTER AND OF "COLLATERAL ESTOPPEL" AND PRIVACY SHOULD BE QUICKLY LAID TO REST BY THIS COURT. ON 11/26/74, THE HONORABLE JUDGE WEINFELD, TRIAL JUDGE IN BASIC CASE OF MERCUR-RAY VS: GE ET AL (REPORTED IN 2nd CIRCUIT AS KREAGER VS: GE ET AL (497 F2d 468 RULED IN ARGUMENT ON COSTS WHERE ATTORNEYS FOR GE, ITA AS WELL AS MR. KREAGER PRESENTED ARGUMENTS FOR ABOUT 1½ HOURS, JUDGE WEINFELD CLEARLY ESTABLISHED UNEQUIVOCABLY THE FACT THAT

3

BRISOL-MYERS COMPANY AND CLAIROL, INC. WERE SIMPLY WIENESSES IN THAT CASE, AND NOTHING MORE, WHEN HE RULED THAT THE DEPOSITION OF ONE DONALD DEVINDORF OF CLAIROL, INC., AS A GENERAL ELECTRIC WIENESS SHOULD BE TAXED IN THE AMOUNT OF \$77.32. FURTHERMORE JUDGE WEINFELD RULED THAT THE OTHER BRISOL-MYERS AND CLAIROL, INC. DEPOSITIONS WERE NOT TAXABLE AS THE PARTIES WERE NOT CALLED AS WIENESSES AT TRIAL, AMONG OTHER THINGS. IN ADDITION, BRISOL-MYERS AND CLAIROL, INC. WERE NOT PARTIES TO THAT ACTION; NOR ACCUSED OF ANY WRONG; SIMPLY APPEARED AS A GENERAL ELECTRIC WIENESS TO REFUSE MATTERS REGARDING A CONTRACT ABOUT TO BE CONSUMMATED BETWEEN KREAGER OR MERCUR-RAY AND BRISOL-MYERS. THIS CONTRACT HAD NO RELATION TO THE ISSUES IN THE GENERAL ELECTRIC CASE; SIMPLY AN UNRELATED MATTER WHERE BRISOL MYERS ATTEMPTED TO ASSIST GE IN CHALLENGING THE CREDIBILITY OF MR. KREAGER'S TESTIMONY. IN ADDITION, BRISOL-MYERS IS UNABLE TO REFER TO ONE SINGLE PAGE OF THE TRIAL TRANSCRIPT IN THAT CASE TO SUPPORT "RES JUDICATA" COLLATERAL ESTOPPEL" OR "PRIVACY" AS NONE EXISTS. WITH THE COOPERATION BETWEEN COUNSEL FOR BRISOL-MYERS AND GE, IF ANY EVIDENCE TO SUPPORT SAME DID EXIST, CLEARLY THEY WOULD HAVE QUICKLY REFERRED TO SAID TESTIMONY WHICH IS NON-EXISTENT.

CLEARLY, BRISOL-MYERS WANTS TO HOLD THIS MATTER IN ABEYANCE SIMPLY SO SHE CAN DELAY THE CASE IN DISTRICT COURT WHEN REMANDED BY THIS 2nd CIRCUIT BY AGAIN DELAYING ON PROCEDURAL MOTIONS. IN ORDER TO SPEED THIS CASE TO TRIAL, IN LIGHT OF OUR NATIONAL ENERGY SHORTAGE, AMONG OTHER THINGS, THIS ISSUES OF "RES JUDICATA", COLLATERAL ESTOPPEL" AND "PRIVACY" MUST BE LAID TO REST IN LIGHT OF FACT THAT THE RECORD IS ABUNDANTLY CLEAR THAT THESE THREE MATTERS ARE NOT PRESENT IN THIS CASE.

REPLY REGARDING "LACK OF STANDING" IN COUNTS III AND IV AND
"NON-COMPLAINT"

8. APPELLANT ADEQUATELY COVERS THESE MATTERS IN BRIEF; HOWEVER, WHERE APPELLEES BRISBOL-MYERS/CLAIROL PARAPHRASE CERTAIN PARAGRAPHS OF COMPLAINT AND TAKE SAME OUT OF CONTEXT HAS NO PLACE IN THIS APPEAL. IN ADDITION, THE MERITS ARE NOT BEFORE THIS COURT; ONLY "PROCEDURAL APPEAL" AS NONE OF THE FACTS AND ISSUES HAVE EVER BEEN TRIED IN ANY COURT.

THE COMPLAINT SPELLS OUT FACTS AND ISSUES WHICH IS ALREADY SUPPORTED BY EVIDENCE IN PLAINTIFF'S POSSESSION SUFFICIENT FOR A JURY, THE TRUE TRIER OF FACT, AND AS OF THIS DATE, THIS CASE HAS NOT PROCEEDED PAST THE PROCEDURAL TECHNICALITIES; NO DEPOSITIONS HAVE BEEN TAKEN (WHILE BRISBOL-MYERS MENTIONS KREAGER NOTICING DEPOSITIONS IN NEW JERSEY TWO DAYS EARLY, AS YET NOT ONE SINGLE DEPOSITION OF ANY OF THE DEFENDANTS HAS BEEN TAKEN).

WHILE BRISBOL-MYERS PREDICTS THAT MR. KREAGER'S CLAIMS ARE UNSUPPORTABLE THIS CURRENT ACTION IS CLASSIC EXAMPLE OF THE CONTRARY. THE ANTITRUST VIOLATIONS, FRAUD AND DECEIT HAVE NEVER BEEN TRIED IN ANY COURT-ROOM AND AT NO TIME IN ANY ACTION HAS THE ISSUES IN THIS TIME PERIOD EVER BEEN TRIED IN ANY CASE REGARDING KREAGER OR MERCURRAY. IN GENERAL ELECTRIC CASES, TRIAL COURT ENDED TESTIMONY 9/7/67; A FAR CRY FROM THIS COMPLAINT ALLEGING ISSUES AND FACTS MOSTLY IN THE 1970's.

THE 2nd CIRCUIT BELIEVES NON-COMPLIANCE WITH FRAUD AND DECEIT RULES; 2nd CIRCUIT MAY PERMIT PLAINTIFF TO AMEND TO SO COMPLY IN ORDER TO AVOID NEW LITIGATION ON THIS MATTER.

REPLY TO BRISTOL-MYERS ET AL FOR A
RESTRANDING ORDER:

9. APPELLANT'S MOTION ON THIS ISSUE WAS DENIED BY ORDER 11/26/74 WITHOUT
PREJUDICE TO APPELLANT'S RAISING THE ISSUES PRESENTED BEFORE PANEL THAT
HEARS THE APPEAL?

- (a) THE FIRST BRANCH OF THIS MATTER DEALS WITH MERCU-RAY INDUSTRIES, INC.
THIS IS ERROR IN ANY RESPECT. MERCU-RAY IS NOT AN APPELLANT; ONLY
MR. KREAGER. JUDGE DUFFY STATES ORDER 6/25/74 P.9 "HE MUST HAVE AN
ATTORNEY PRESENT THE CORPORATION'S LEGAL CLAIMS". THE CORPORATION
STANDS ON THIS RULING AND DID NOT ASSIGN TO THIS APPEALS COURT
BUT INSTEAD RELIES ON DISTRICT COURT ORDER WHICH IS ON EFFECT FOR THE
CORPORATION TO HIRE COUNSEL TO REPRESENT IT AND REASSER IT'S CLAIMS.
- (b) FOR BRISTOL-MYERS TO SUGGEST A RESTRAINING ORDER APPEARS HIGHLY
CONFICTING ON ITS FACE SINCE AT NO TIME DID APPELLEES SO MOVE IN
THE DISTRICT COURT FOR ANY SUCH RELIEF. (ALSO NOTE TYPEWRITTEN
BRIEF BRISTOL-MYERS P.9 FOOTNOTE WHERE THEY CRITICIZE MR. KEAGER
FOR MENTIONING A SUBJECT MATTER WHICH THEY CLAIM WAS NEVER RAISED IN
DISTRICT COURT; YES CONTRADICT THEMSELVES WITH THIS MOTION).
YES, THE MATTER MR. KEAGER RAISED WAS BY MOTION TO THIS COURT FOR
PERMISSION; WHILE BRISTOL-MYERS NEVER SO MOVED.
- (c) I SHALL BRIEFLY REPLY TO ONLY A FEW OF THE CASES CITED BY BRISTOL-
MYERS AS ALL CASES CITED ARE SO FAR REMOVED FROM THIS CASE THAT
THAT ARE UNWORTHY OF COMMENT.

FOR EXAMPLE: IN GAMBOIZ V. YELENCZICS 468 F2d 897 (3rd Cir. 1972)
WAS ACTION BY MAYORALY CANDIDATE AGAINST POLICE OFFICERS, MUNICIPAL

COURT CLERKS ETC. FOR VIOLATION OF CIVIL RIGHTS; WAS ALSO A RES JUDICATA DECISION WHERE CRIMINAL ACTION WAS BROUGHT AND DISMISSED WITH PREJUDICE; THEREFORE RES JUDICATA BARRED RELITIGATION OF CLAIMS DISMISSED IN FIRST SUIT.

IN INSTANT ACTION; AT NO TIME HAS MR. KREAGER EVER BROUGHT AN ACTION AGAINST A JUDGE OR OFFICER OF THE COURT SUCH AS MUNICIPAL COURT CLERK, POLICE OFFICERS ETC.

ALSO THERE HAS NEVER BEEN A RES JUDICATA RULING IN CURRENT MATTER.

THE INSERTION OF THIS CASE INTO THIS ACTION APPEARS AT BEST A DIVERSION BY THE APPELLEES, BRISBOL-MYERS AND CLAIROL, INC. FROM THE REAL, LIVE ISSUES IN THIS MATTER; NAMELY "CHANGE OF STATE", NON-COMPLIANCE; AND LACK OF STANDING.

POLLACK V. ASPBURY ET AL USDC 14 FRD 454 (SDNY 1953) WAS ACTION AGAINST 50 CORPORATIONS AND PERSONS; COMPLAINT ALONE WAS 237 PAGES; OBVIOUSLY NOT A PROPER COMPLAINT UNDER ANY STANDARD.

THE INTENTION OF BRISBOL-MYERS (TO ATTEMPT TO COMPARE WITH THE INSTANT ANTI-TRUST ACTION WHERE THE COMPLAINT IS TECHNICALLY DRAWN, ISSUES AND FACTS SUFFICIENT FOR JURY, NEVER TRIED IN ANY COURT AT ANY TIME) IS MYSTERIOUS. IT SEEMS BRISBOL-MYERS IS ATTEMPTING TO COMPLETELY DIVERGE THE COURT'S ATTENTION FOR THE ISSUES IN THIS APPEAL AND THE CONDUCT OF BRISBOL-MYERS ATTORNEYS IN SOLICITING WITHDRAWAL OF MERCURRAY'S COUNSEL (SEE APPENDIX).

ALSO RUDNICKI V. McCORMACK 210 F. SUPP. 905 (DRI 1962) WAS CIVIL RIGHTS ACTION AGAINST STATE AND FEDERAL JUDGES, ETC. COURT RULED JUDGES IMMUNE FROM CIVIL LIABILITY FOR THEIR JUDICIAL ACTS.

RUDERER V. US 462 F 2d 897 (3 CIR. 1972)

COURT OF APPEALS HELD IN VIEW OF SOVEREIGN IMMUNITY DOCTRINE AND FACT U.S. HAD NOT CONSENED TO BE SUED; IN ADDITION TO PLAINTIFF HAD FULL OPPORTUNITY TO PRESENT CLAIMS.

CLEARLY NON-APPLICABLE IN INSTANT MATTER. ALSO CLAIMS IN THIS MATTER HAS NOT EVEN BEEN TOUCHED BY DISTRICT COURT YET; SIMPLY THE PROCEDURAL MOTIONS BEFORE THIS COURT. THE FACTS AND ISSUES IN THE INSTANT MATTER HAVE NEVER BEEN TRIED IN ANY COURROOM, AND TIME PERIOD ALONE PROVES SAME CONCLUSIVELY.

NOT ONLY ARE NONE OF THESE CASES CITED BY BRISTOL-MYERS ET AL EVEN TANGENTIALLY RELATED TO THE INSTANT MATTER; BUT APPARENTLY INSERTED TO DRAW 2nd CIRCUIT'S ATTENTION FROM THE REAL ISSUES. CLEARLY, THIS ANTI-TRUST CASE, FILLED WITH FACTS AND ISSUES WHICH HAVE NEVER BEEN TRIED IN ANY COURT AT ANY TIME MUST PROCEED ON ITS MERITS TO TRIAL BEFORE A JURY THE TRUE TRIER OF FACT.

REQUEST TO STRIKE PRINTED BRIEF OF
BRISTOL-MYERS & CLAIROL, INC.

10. APPELLANT SO MOVED SO MOVED BY MOTION OF 10/23/74; ORDER 11/26/74 DENIED WITHOUT PREJUDICE TO RAISE BEFORE PANEL THAT HEARS APPEAL.
- (1) BRIEF PRINTED WAS UNIMMELY; SEVERAL DAYS LATER DID FILE TYPEWRITTEN BRIEFS TIMELY AND I POSE NO OBJECTION TO PROCEEDING ON SAME; (NOTE BRISTOL-MYERS HERSELF CLAIMS FACT THAT KREAGER NOTICED DEPOSITIONS 2 DAYS EARLY WAS SERIOUS MATTER; BY HER STANDARDS, SHE FAILED TO ASK COURT FOR LEAVE FOR BEING NON-TIMELY; MAILED 10/18/74, 3 DAYS LATE, WITHOUT LEAVE OF THE COURT).

ALSO PRINTED BRIEF CONTAINS MATERIAL DIFFERENT FROM TYPEWRITTEN
BRIEF FILED TIMELY; ALSO COVER PAGE AND CONTENT LISTS MERCU-RAY AS
AN APPELLANT; WHILE ONLY MR. KREAGER IS AN APPELLANT. ALSO
INCORPORATE MOTION PAPERS 10/23/74 AS PART OF THIS BRANCH.

8/20/74 APPELLANT MOVES COURT FOR APPELLEE TO PROCEED ON TYPEWRITTEN
BRIEFS; DENIED STATING APPELLEE MUST MAKE MOTION; FAILED TO SO DO.

RULE 32 C.A. PERMITS TYPEWRITTEN OR ANY OTHER COPYING OR DUPLICATING
PROCESS THAT PROVIDES CLEAR BLACK IMAGE ON WHITE. PRINTING UNDER
ANY STANDARD IN THIS CASE WHERE APPELLANT ALREADY PROCEEDED ON
TYPEWRITTEN PAPERS UNNECESSARY.

MERCU-RAY INDUSTRIES, INC. NOT AN
APPELLANT:

11. BRISTOL-MYERS AND CLAIROL NOT ONLY ARGUE IN BRIEF; BUT SHOW COVER
AS MERCU-RAY AN APPELLANT. PLEASE REFER TO MY MOTION PAPERS REGARDING SAME.
HOWEVER, (1) DISTRICT COURT RULED AS WELL AS 2nd CIRCUIT, CORPORATION CAN
ONLY APPEAR BY COUNSEL; (2) DUFFY ORDER P.9 6/25/74 "HE MUST HAVE AN ATTORNEY
PRESENT THE CORPORATION'S LEGAL CLAIMS". THIS ORDER OF DUFFY, D.J. WAS NOT
APPEALED BY THE CORPORATION. ONLY MR. KREAGER IS AN APPELLANT HERE.
IN EFFECT, DUFFY, D.J. SAYS "FOR CORPORATION TO GET COUNSEL AND THEN PROCEED"..
BRISTOL-MYERS ARGUED HEAVILY IN DISTRICT COURT FOR DISMISSAL OF CLAIMS
ON BASIS CORPORATION WAS WITHOUT COUNSEL; CLEARLY, SHE MUST BE BOUND BY THE
SAME DECISION SHE ARGUED IN FAVOR OF IN DISTRICT COURT. THE APPELLANT HERE
IS MR. KREAGER AND ALL MATTERS RELATING TO THE CORPORATION ARE UNIMPELLED
AND NOT APPEALED BY THE CORPORATION.

MATTERS BEFORE 3rd CIRCUIT HAVE NO
PLACE IN THIS APPEAL:

MY MOTION 10/23/74 DENIED 11/26/74 WITHOUT PREJUDICE TO RAISE BEFORE
PANEL HEARING APPEAL ADDRESSED ITSELF TO THIS MATTER.

12. BRISTOL-MYERS & CLAIROL, INC. INSERT IN THIS MATTER A CASE COMMENCED
AFTER THIS APPEAL FILED IN ANOTHER DISTRICT. MATTERS STILL PENDING
REGARDING SAME IN 3rd CIRCUIT; AND WILL BE FURTHER APPEALED TO
SUPREME COURT.

WHILE BRISTOL-MYERS STATES REALLEGED BASICALLY SAME COMPLAINT;
THIS IS NOT TRUE AS THE COMPLAINANTS THEMSELVES DEMONSTRATE.
IN ADDITION, BRISTOL-MYERS INSERTS THE ORDER OF JUDGE BIUNNO IN
THEIR BRIEF WHICH IS IMPROPER UNDER ANY CIRCUMSTANCE. BRISTOL-
MYERS, WHEN REQUESTED FOR LIST OF ITEMS TO INCLUDE IN APPENDIX,
REFUSED TO REPLY; NOW PRINT AN OPINION OF ANOTHER COURT WHICH UNDER ANY
CIRCUMSTANCE WOULD BE AN APPENDIX ITEM, AS PART OF THEIR BRIEF. IN
ADDITION, 3rd CIRCUIT MATTERS MUST PROCEED THROUGH 3rd CIRCUIT AND
2nd CIRCUIT MATTERS THROUGH 2nd CIRCUIT.

IT IS APPARENT FROM THE NEW JERSEY DECISION THAT THE JUDGE QUICKLY
DISMISSED CONFUSING THE GENERAL ELECTRIC CASE BEFORE JUDGE DUFFY WITH
THE BRISTOL MYERS CASE BEFORE JUDGE DUFFY. IN ADDITION, NO ARGUMENTS
WERE PERMITTED BY THE COURT; AND THE JUDGE'S LAW FIRM ADMITTED CONFLICT
OF INTERESTS WITH GENERAL ELECTRIC; AMONG OTHER THINGS. HOWEVER,
THE JUDGE RULING QUICKLY "FRIVOLOUS" APPARENTLY BECAUSE COMPLAINT IN
2nd CIRCUIT AGAINST SAME PARTIES; ALSO NOTEABLE 3rd CIRCUIT REVERSED PART
OF JUDGE'S RULING AND BALANCE STILL PENDING.

IN ADDITION ON 11/18/74 3rd CIRCUIT RETURNED TO BRISOL MYERS ATTORNEYS THEIR PAPERS AS IMPROPER.

THE INSTANT COMPLAINT, BASED UPON ANTI-TRUST CLAIMS AND FRAUD AND DECEIT NEVER TRIED IN ANY COURTROOM AT ANYTIME AND IN A TIME PERIOD COMPLETELY DIFFERENT FROM THE GENERAL ELECTRIC CASES, AS THE COMPLAINT DEMONSTRATES IS A MERITORIOUS COMPLAINT FILLED WITH ISSUES AND FACTS SUFFICIENT FOR A JURY.

WHILE THE NEW JERSEY COMPLAINT, FILED AFTER THIS APPEAL WAS FILED, WAS QUICKLY DISMISSED, BASING ON NEW YORK CASES, UNDER NO CIRCUMSTANCE CAN BE CONFUSED WITH THE CURRENT COMPLAINT BEFORE THIS COURT WHICH ISSUES, FACTS, AND TIME PERIOD NEVER TRIED IN ANY COURT.

13. TIMELINESS:

APPELLEES TYPEWRITTEN BRIEF FILED 10/15/74; PRINTED BRIEF 10/18/74; MR. KREAGER MADE MOTION 10/23/74 FOR PRINTED BRIEF OF BRISOL-MYERS BE SIGNED; AND OTHER RELIEF WHICH WAS DENIED BY ORDER 11/26/74 WITHOUT PREJUDICE TO RAISING ISSUES PRESENTED BEFORE PANEL THAT HEARS APPEAL. WHEREBY APPELLANT UNABLE TO PREPARE THIS REPLY BRIEF UNTIL ORDER OF COURT DATED 11/26/74. WHEREFORE, IN ANY EVENT, SINCE MOTION WAS PENDING REGARDING APPELLEES BRIEFS, THIS REPLY BRIEF IS FILED INSANILY. CLEARLY, UNDER ANY CIRCUMSTANCE WITHIN 3 DAYS PRIOR TO ARGUMENT AND COURT OFFICIALS HAVE INFORMED ME THAT NOT NECESSARY TO MAKE MOTION FOR TIMELINESS AS NOT AN ISSUE WITH THIS REPLY BRIEF.

C O N C L U S I O N :

IN THIS MAJOR ANTI-TRUST ACTION THE (1) ISSUES; (2) FACTS OF THE CASE HAVE NEVER BEEN TRIED AT ANYTIME.EVEN (3) DEPOSITIONS HAVE NEVER BEENN COMMENCED. THE TECHNICALITY HERE WHICH IS CHANGING TIALE OF ACTION CLEARLY MUST BE ORDERED AND THIS ACTION REMANDED TO THE DISTRICT COURT FOR CASE TO PROCEED ON ITS MERITS.

APPELLANT ASKS THE COURT TO REASSIGN THIS CASE IN THE DISTRICT COURT OR ORDER SAME BE REASSIGNED UNDER THE CIRCUMSTANCES AS CLEARLY AS OF THIS DATE,NONE OF THE FACTS AND ISSUES IN THE ACTION HAVE BEEN TRIED; ALSO ALL CLAIMS IN NEW TIME PERIOD AND STILL NO DEPOSITIONS TAKEN AS OF THIS DATE;WHEREBY WOULD BE COMMENCING ON THE FACTS AND ISSUES.

IN ADDITION, APPELLANT REQUESTS PERMISSION TO AMEND COMPLAINT IN DISTRICT COURT TO COVER TIME PERIOD UP TO THE PRESENT .

IT IS RESPECTFULLY REQUESTED THAT THE TIALE OF THIS ACTION BE ORDERED CHANGED AND THE ASSIGNMENT HONORED AS EVEN JUDGE DUFFY ADMITS "IT IS WELL SETLED THAT AN ANTI-TRUST CLAIM CAN BE ASSIGNED". (P4 6/25/74-DUFFY,D.J.) ALSO IN VIEW OF THE RECENT ACKNOLEDGMENT OF DISTRICT COURT BY JUDGE WEINFELD IN PERMITTING MR. KREAGER TO ARGUE THERE AND GE AND IT NOTICING MR. KREAGER,CERTAINLY APPEARS THAT DISTRICT COURT ALREADY ACKNOWLEDGES THE CHANGE IN TIALE OF THE GE CASE WHICH DUFFY,D.J. RELIED UPON.

WHEREBY, THE ORDER OF DUFFY,J. ON PROCEDURES DATED 6/25/74 DISMISSING SWORN BEFORE ME THE COMPLAINT IS RESPECTFULLY REQUESTED TO BE OVERURNED IN ITS ENTIRETY.
11/27/74.

Joseph J. Tambace
JOSEPH J. TAMBACE
Notary Public State of New York
No. 01-16505
Qualified in New York County
Commission Expires March 30, 1976

DATED: NOVEMBER 27, 1974
NEW YORK, NEW YORK

RESPECTFULLY SUBMITTED,

James Scott Kreager
JAMES SCOTT KREAGER

AFFIDAVIT OF SERVICE

JAMES SCOTT KREAGER, BEING DULY SWORN, DEPOSES AND SAYS THAT HE SERVED A TRUE COPY OF REPLY BRIEF OF PLAINTIFF-APPELLANT, JAMES SCOTT KREAGER, TO BRIEF OF DEFENDANT-APPELLEES BRISTOL-MYERS COMPANY AND CLAIROL, INC. UPON THE APPELLEES HEREIN BY PERSONALLY DELIVERING ON THIS DATE A TRUE COPY OF THE REPLY BRIEF AS FOLLOWS: ON 11/27/74 WEIL, LEE & BERGIN, ESQS

60 EAST 42nd STREET
NEW YORK, NEW YORK

ATTORNEYS FOR BRISTOL-MYERS COMPANY AND
CLAIROL, INC.

MICHEL S. SCHWARTZ
432 PARK AVENUE SOUTH
NEW YORK, NEW YORK

YOURS ETC.,

James Scott Kreager

JAMES SCOTT KREAGER
350 EAST 30th STREET 1E
NEW YORK, NEW YORK 10016
TEL. (212) 683-5446

DAVID: NEW YORK, NEW YORK
NOVEMBER 27, 1974

SWORN TO BEFORE ME THIS
27th DAY OF NOVEMBER 1974.

Joseph J. Bambrick
JOSEPH J. BAMBRICK
Notary Public, State of New York
No. 31-5165005
Qualified in New York County
Commission Expires March 30, 1976

Copy received
Brown Hoff
Weil, Lee & Berrier
11/27/74

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